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IN THE

Supreme Court of the United States

October Term, 1962.

No. 437—[redacted]

PEOPLE *ex rel.* EDWARD STOCK,
Plaintiff-Appellant,

vs.

CHRISTOPHER F. TERRENCE, M. D., Director,
Rochester State Hospital,
Defendant-Respondent.

Action No. 1.

PEOPLE *ex rel.* EDWARD STOCK,
Plaintiff-Appellant,

vs.

CHRISTOPHER F. TERRENCE, M. D., Director,
Rochester State Hospital,
Defendant-Respondent.

Action No. 2.

ON APPEAL FROM THE NEW YORK STATE COURT OF APPEALS.

PETITION FOR REHEARING OF ORDER AND DECISION DISMISSING APPEAL FOR WANT OF SUBSTANTIAL FEDERAL QUESTION.

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Index.

	Page
Statement of Petitioner	1
Reasons for Granting Rehearing and Allowing Appeal	2
Conclusion	7
Certificate of Counsel	7

CITATIONS

In re Coates, 9 N. Y. 2d 242, 213 N. Y. S. 2d 74, 173 N. E. 2d 797	2, 3, 5, 6
Coates v. Walters, 368 U. S. 34	2
People ex rel. Morriale v. Branham, 291 N. Y. 312, 52 N. E. 2d 881	5
People ex rel. Ordway v. St. Saviours Sanitarium, 37 App. Div. 363, 56 N. Y. S. 431	5
People ex rel. Stock v. Terrence, 11 N. Y. 2d 362, 229 N. Y. S. 2d 737, 183 N. E 2d 752	2, 4, 6
Warner v. State, 297 N. Y. 395, 79 N. E. 2d 459	3

OTHER AUTHORITIES

Mental Hygiene Law of the State of New York, Section 76	2, 5
Mental Illness and Due Process, Cornell University Press	3, 5
McKinney's Annotated Laws of the State of New York, Volume 34a, Section 76	3

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People *ex rel.* Edward Stock,

Plaintiff-Appellant,

vs.

Christopher F. Terrence, M. D., Director, Rochester State Hospital,

Defendant-Respondent.

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On Appeal From the New York State Court of Appeals.

PETITION FOR REHEARING OF ORDER AND DECISION DISMISSING APPEAL FOR WANT OF SUBSTANTIAL FEDERAL QUESTION.

Statement of Petitioner.

Petitioner, Edward Stock, by his counsel, prays that this Court grant rehearing of its order and decision of December 10, 1962, which dismissed the appeals of your petitioner. Your petitioner further prays that the appeals be allowed as requested in the Jurisdictional Statement filed during the October Term, 1962 of this Court and numbered 437 Misc.

Reasons For Granting Rehearing and Allowing Appeal.

I. There are involved in these appeals substantial questions involving confinement of many persons deprived of their liberty for an indeterminate period of time. These consist of all the inmates of the state hospitals of New York State who have been committed pursuant to Section 74 of the Mental Hygiene Law of the State of New York. This statute, together with Section 76 of the Mental Hygiene Law, allowing a jury trial on the question of mental illness and confinement, has been supplemented and added to by two New York State Court of Appeals decisions. The cases in question are *In re Coates*, 9 N. Y. 2d 242, 213 N. Y. S. 2d 74, 173 N. E. 2d 797, appeal dismissed *sub. nom. Coates v. Walters*; 368 U. S. 34, and the causes of action on appeal to this Court, *People ex rel. Stock v. Terrence*, 11 N. Y. 2d 362, 229 N. Y. S. 2d 737, 183 N. E. 2d 752 (2 actions). In these cases the Court of Appeals "legislated" into Section 74 and Section 76 the requirement that notice be given before the 30-day period within which to demand a jury trial commenced under Section 76 and, further, that state hospital inmates are entitled to a prompt and complete hearing *ab initio*. The statutes in question did not require this notice. The notice requirement was set forth by the Court in the *Coates* case. In the *Stock* case it was held this notice was required but did not have to be given.

II. In our Jurisdictional Statement we were not able to set forth what future effect these statutes, as amended by the decisions, were to have upon the inmates of the state hospitals of this state. It was not known what rules would be promulgated by the Department of Mental Hygiene of the State of New York under the decisions. Since the filing of our Jurisdictional Statement, some light has been shed on the matter by the reports and recommendations on admission to mental hospitals under New York Law by the Special Committee to Study Commitment Procedures of the Association of the Bar of the City of New York in cooperation with Cornell Law School. This report and recommendations have been published under the title of "Mental Illness and Due Process" by the Cornell University Press, Ithaca, New York, 1962, and were catalogued in the Library of Congress under Catalogue card 62-18213. In this report, under the heading of "Review of Order of Hospitalization," pages 179 through 182, the problem involved in these appeals and the decision in *In re Coates* is discussed by the Committee and they set forth what the thinking of the Department of Mental Hygiene is on this matter. The first point made was that the provision for a jury trial under Section 76 is rarely used and the Committee's inquiries found nobody familiar with any actual case under Section 76. Under the annotations to Section 76 in McKinney's Annotated Laws of the State of New York, Volume 34A, there are two cases set forth, to wit: *Warner v. State*, 297 N. Y. 395, 79 N. E. 2d 459, and the *Coates* case, cited above, which tends to show that the action is rarely invoked or used.

Further, in the report at pages 181 and 182, it is set forth what the effect of *Matter of Coates* is upon thousands of patients hospitalized under Section 74 and what the thinking of the Department of Mental Hygiene is to the giving of the notice required by the *Coates* case. We quote here the final paragraph on that section:

"This means that many thousands of patients, hospitalized under Section 74 and never served with a notice of the filing of the director's certificate, now have a continuing right to seek review under Section 76 even though they may have been in the hospital for many years. The Department of Mental Hygiene *does not plan to give notice of the prior filing* to this large group of patients and is content, *according to the Department's counsel,* to permit the Section 76 remedy to remain open to all certified patients at all times, just as the remedy of habeas corpus, is always open to them. *Although the Department's position removes any time limitation on the right of patients to avail themselves of this remedy, in practice patients are not benefited if they do not know about it.*" (Italics added.)

The last sentence set forth above indicates the substantial problems involved in the lower Court's decisions in that a patient, in practical effect, is not afforded the remedy of a jury trial if he does not actually know about it through some type of notice. It is indicated that the Department of Mental Hygiene is going to be pernicious and arbitrary with the notice of a right to a jury trial to these people who, for all practical purposes, are being permanently denied their liberty.

This proposition, that no notice must be given, was further sustained by the Court of Appeals in the cases on appeal here. The Court of Appeals held in *Stock*, at page 366 of the official report, "* * * that absence of such notice had no effect on the validity * * * of relator's continued detention after and by reason of the Medical Director's official certificate." This simply adds to the arbitrary power, with reference to the giving of notice, which the Department of Mental Hygiene may exercise over these patients. The net effect is that the statutes, as amended by the *Coates* case and the *Stock* case, have given these unfortunate persons a habeas-corpus like proceeding which is of very little value to

them when what is required is a prompt and complete hearing, *ab initio* on the question of original confinement; nor has habeas corpus ever been held to correct the lack of proper notice and hearing before the person is deprived of his liberty. See *People ex rel. Ordway v. St. Saviours Sanitarium*, 37 App. Div. 363, 56 N. Y. S. 431, and *People ex rel. Morriale v. Bramham*, 291 N. Y. 312, 52 N. E. 2d 881. Under the statutes in question, the patient would be in no better position than when his sole right was to a writ of habeas corpus.

Thus, in the Section 76 Proceeding a person confined to a state hospital is in no better position than he would be under a habeas corpus. Very few will avail themselves of the jury trial under Section 76 of the Mental Hygiene Law because they will not know their rights thereunder (*Mental Illness and Due Process, supra*, pages 179 and 182).

III. Perhaps it is construed that this appeal is being taken on the basis of an error committed by the Court below, and that we are asking this Court to review as a Court of Error. This is not so but rather we are appealing upon the basis of the importance of the question involved and of the wrong to be remedied. It happens that the error of the Court below is an important part of the appeal we are attempting. This is so because the Court's decisions in the cases on appeal and in *Coates* are intermingled with the question which we are seeking to have reviewed by the Court. We are here faced with a statute which, we contend, is depriving many persons of their liberty without "due process." These statutes are intertwined with the decisions of the Court of Appeals in the case at bar and *In re Coates* in that the Court below has "legislated" or amended into the statutes certain requirements which were not found there before and we are now faced for the first time with statutes which require notice and a prompt and complete hearing

ab initio, and further sets forth that this notice does not have to be given. The question is, does this meet the minimal requirements of due process, not whether the Court of Appeals was right or wrong in its decision.

IV. This appeal is in no way frivolous nor do we feel without merit, nor has it been foreclosed by prior decisions of this Court. This Court has, of course, in many instances in the past dealt with the specific problems of "due process" and notice. However, we were unable to find any cases dealing with the specific problems involved here—that of deprivation of liberty of persons alleged to be mentally ill, requiring a notice for a hearing *ab initio* which notice does not have to be given.

V. It is respectfully submitted that the decision of this Court in the *Coates* case (368 U. S. 34) does not and should not foreclose the appeal in this case. The *Coates* case and the *Stock* case complement each other and are interningled one another with the statutes which are questioned in this appeal. These cases, together with the statutes, must be taken as a whole to obtain an insight into what is presently required in New York State to protect a person's liberty under the commitment procedures for mentally ill persons.

VI. These cases, together with the statutes upon which they are based, will affect all future commitments to state hospitals in New York State. The denial of an appeal in these cases would, in truth, foreclose any future cases arising under the applicable statutes in New York State before this Court.

It is respectfully submitted that this is the last opportunity to which this Court may address itself to these statutes, as integrated by the *Coates* decision and the decision in the cases at bar. As we pointed out in the above quotation from the report on *Mental Illness and Due Process*, the Department of Mental Hygiene of this state does not plan to

give notice to any of these patients who have been committed under Section 74 and the net result thereof is that a very small percentage of these people will ever avail themselves of their rights under Section 76 to a jury trial, simply because they will not know their rights exist under this section. The effect of the statute, as set forth, is to deprive a substantial number of people in New York State of their liberty without proper notice under the traditional concepts of due process.

Conclusion.

For the reasons set forth above, and set forth in petitioner's Jurisdictional Statement, it is respectfully urged that rehearing be granted and that upon such rehearing the appeals herein be allowed.

Respectfully submitted,

WHITBECK & HOLLORAN,
By WALTER J. HOLLORAN,
Counsel for Petitioner.

Certificate of Counsel.

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and is based upon the grounds specified in Rule 58 of the Rules of this Court.

WHITBECK & HOLLORAN,
By WALTER J. HOLLORAN,
Counsel for Petitioner.